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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,946	04/20/2001	Rebecca E. Cahoon	BB1410PCT	9292

7590 09/23/2004  
E I du Pont de Nemours & Company  
Legal Patents  
Wilmington, DE 19898

EXAMINER

BAUM, STUART F

ART UNIT PAPER NUMBER

1638

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/807,946

Applicant(s)

CAHOON ET AL.

Examiner

Stuart F. Baum

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-35 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim objection***

1. Claims 6-35 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. Applicants have recited "any of claims 1-5" instead of "any one of claims 1-5". See MPEP § 608.01(n). The objection includes dependent claims. For purposes of compact prosecution, the claims have been restricted. Correction is requested.

***Election/Restrictions***

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-15, 19-29, drawn to an isolated polynucleotide comprising a first nucleotide sequence encoding a first polypeptide, a second nucleotide sequence encoding a second polypeptide, a third nucleotide sequence encoding a third polypeptide, a fourth nucleotide sequence encoding a fourth polypeptide or a fifth nucleotide sequence encoding a fifth polypeptide, and method for transiently modulating the level of WUS protein in a plant cell, method for inducing meristem proliferation in a plant cell, a chimeric gene, or a transgenic plant and seed comprising said isolated polynucleotide.

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Group II, claim(s) 16-18, drawn to an isolated polypeptide and method for transiently modulating the level of WUS protein in a plant cell and method for inducing meristem proliferation in a plant cell comprising introducing the isolated polypeptide.

Group III, claim(s) 30-35, drawn to a probe.

**For the election to be complete, Applicant is also to elect one corresponding pair of DNA and amino acid sequences from those listed in claims 1, 3 and 4.**

3. The Office interprets claims 30-35 drawn to a polynucleotide fragment comprising a nucleotide sequence recited in any one of claims 1-5 containing at least 30, 40 or 60 nucleotides to mean that the claims are drawn to oligonucleotide probes rather than entire coding sequences.
4. Pursuant to 37 CFR 1.475(d), the ISA/US considers that where multiple products and processes are claimed, the main invention shall consist of the first invention of the category first mentioned in the claims and the first recited invention of each of the other categories related thereto. Accordingly, the main invention (Group I) comprises the first recited product, an isolated polynucleotide and method for transiently modulating the level of WUS protein in a plant cell and method for inducing meristem proliferation in a plant cell, a chimeric gene, and transgenic plant and seed comprising the isolated polynucleotide. Further pursuant to 37 CFR 1.475(d), the ISA/US considers that any feature which the subsequently recited products and methods share with the main invention does not constitute a special technical feature within the meaning of PCT Rule 13.2 and that each of such products and methods accordingly defines a separate invention.

5. The inventions are linked by technical features of a homeotic gene. However, this feature is not special because it does not constitute an advance over the prior art. Kano-Murakami et al (1993, FEBS 334(3):365-368) teach a rice homeotic gene and a plant transformed with said gene.

6. In addition, Applicants' chemical compounds, i.e., different DNA sequences encoding different polypeptides, each have different properties and different core structures that elicit different activities; and as such, the Groups I-III are not linked by, or share, a single special technical feature. The full-length polynucleotides of Group I, are not shared by the proteins of Group II or by the oligonucleotide probes of Group III.

7. Because these inventions are distinct for the reasons given above, and the literature and sequence searches required for each of the Groups are not required for another of the Groups, restriction for examination purposes as indicated is proper.

8. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stuart F. Baum whose telephone number is 571-272-0792. The examiner can normally be reached on M-F 8:30-5:00.

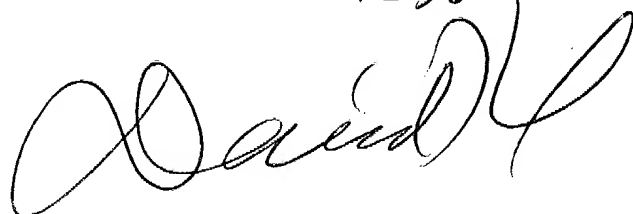
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on 571-272-0804. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

Stuart F. Baum Ph.D.  
Patent Examiner  
Art Unit 1638  
September 14, 2004

DAVID T. FOX  
PRIMARY EXAMINER  
GROUP 180-1638

A handwritten signature in black ink, appearing to read "David T. Fox", written over the printed name and title.